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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,776	09/27/2004	Takayuki Oga	NAA-OGA-P40	7578

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EXAMINER

CHHABRA, ARUN S

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/509,776

Applicant(s)

OGA, TAKAYUKI

Examiner

Arun S. Chhabra

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/8/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Jigyodan (JP Publication Number 10-005279).

Jigyodan discloses an exercise apparatus for knee bending exercises that has a chair 11 which goes up and down and which the user may sit upon at any time while doing knee bends with a lifting device. The lifting device is coupled to a set of lifting mechanisms such that it is attached to and raises a chair as the user stands up and pulls their arms. The chair is always maintained on the user's buttocks throughout the movement from a sitting posture to a standing posture. The apparatus of Jigyodan also discloses a base 1 having supporting columns 2 and the lifting mechanisms are mounted to the supporting columns. The lifting mechanisms have lifting arms 6 and 7, which are moved and operated by the user as they move from a sitting to standing posture.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan as applied to claim 1 above and further in view of Meyer et al. (US Patent Number 4,598,944) and Marcoux et al. (US Patent Number 6,213,554).

Jigyodan discloses an exercise assisting instrument having a lifting device with a base 1 and a pair of supporting columns 2 along with lifting mechanisms containing lifting arms 6 and 8 connected to each other at hinge points 7. The lifting arms are fixedly hinged to the support column at one end and move upward and downward along the support column at the other end. Jigyodan also discloses a motor, used to assist the upward movement of the lifting mechanisms of the lifting device.

Thus, Jigyodan discloses the claimed invention except for the lever arms, connecting member, stopper, lifting linkage and lifting base.

Meyer teaches that it is known to use lifting arms 63 and a connecting member 40 as set forth in column 5, line 61 – column 6, line 44 and column 4, line 66 – column 5, line 9 respectively. The lever arms have handles and length adjusting devices making them telescopically adjustable for users of any height or arm length so that the users can have assistance and a grip to hold onto when engaging in knee bending. The lever arms also aid in lightening the burden on exercisers engaging in knee-bending exercises by allowing the upper body to assist them in lifting. The connecting member is used to provide a connection between the lifting arms and lever arms so that they are both able to move in conjunction. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as

taught by Jigyodan, with lever arms and a connecting member as taught by Meyer, since such a modification would provide the standing up aid with lever arms to aid the user in exercising and with a connecting member to allow for a connection between the lifting arms and lever arms.

Marcoux teaches that it is known to use a stopper as set forth by reference number 86 to stop a chair from moving down further. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with a stopper as taught by Marcoux, since such a modification would provide the standing up aid with a stopper for providing a stop to downward chair movement.

In regards to claim 6 and 7, Marcoux teaches that it is known to use a lifting linkage to provide a means for moving the lifting arms in conjunction with the lever arms. In Figure 4a of Marcoux, a connecting member 60 is shown to connect first hinge points between lifting arms 110 and lever arms 50 so that the lifting arms can control the movement of the lever arms. The lifting linkage 52 is placed to aid this movement so that the lifting arms and lever arms can move in conjunction with each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with a lifting linkage as taught by Marcoux, since such a modification would provide the standing up aid with a lifting linkage to ensure conjunction between the movement of the lifting arms and lever arms.

Meyer teaches that it is known to use a lifting base as shown by the structure under reference number 17 in Figure 3. Meyer does not explicitly state why a lifting base is used, but it appears that it is used to provide a support for the seat as the lifting device moves up and down. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with a lifting base as taught by Meyer, since such a modification would provide the standing up aid with a lifting base for providing support to the chair during knee bending exercises.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan in view of Meyer and Marcoux as applied to claim 3 above, and further in view of Pillot (US Patent Number 4,569,556).

Jigyodan, Meyer and Marcoux disclose the claimed invention except for the upward movement assisting device being composed of an elastic member. Pillot teaches that it is known to use elastic as set forth in column 4, line 38 – column 5, line 2 and in column 5, lines 23-50 to perform the functions of compensation of weight, energy absorption, and restitution, for better assisting the user in standing up exercises. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with an upward movement assisting device composed of an elastic member as taught by Pillot, since such a modification would provide the standing up aid with an elastic upward movement assisting device for providing assistance to the user when performing lifting exercises.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan as applied to claim 1 above and further in view of Meyer and Bushnell (US Patent Number 6,652,429).

Jigyodan discloses the claimed invention except for the lever arms, connecting member, and wire members.

Meyer teaches that it is known to use lifting arms 63 and a connecting member 40 as set forth in column 5, line 61 – column 6, line 44 and column 4, line 66 – column 5, line 9 respectively. The lever arms have handles, angle adjusting devices and length adjusting devices making them telescopically adjustable for users of any height or arm length so that they can have assistance and a grip to hold onto when engaging in knee bending. The lever arms also aid in allowing the use of the upper body when lifting up, to lighten the burden on users doing knee-bending exercises. The connecting member is used to provide a connection between the lifting arms and lever arms so that both move in conjunction with each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with lever arms and a connecting member as taught by Meyer, since such a modification would provide the standing up aid with lever arms to aid the user in exercising and a connecting member to allow for a connection between the lifting arms and lever arms.

Bushnell teaches that it is known to use wire members as set forth in column 4, lines 1-13 to provide a device for pulling the lever arms upward and downward. It would have been obvious to one having ordinary skill in the art at the time the invention was

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made to modify the standing up aid as taught by Jigyodan and Meyer, with wire members as taught by Bushnell, since it is known that wire members can be used for pulling movements with lift or lever arms and thus such a modification would provide the standing up aid with wire members for pulling lever arms.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan in view of Meyer and Bushnell as applied to claim 8 above, and further in view of Pillot.

Jigyodan, Meyer and Bushnell disclose the claimed invention except for the upward movement assisting device being composed of an elastic member. Pillot teaches that it is known to use an elastic member, which is positioned between a supporting column 7 and lifting arms 18, as set forth in column 4, line 38 – column 5, line 2 and in column 5, lines 23-50 to perform the functions of compensation of weight, energy absorption, and restitution, for better assisting the user in standing up exercises. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with an upward movement assisting device composed of an elastic member as taught by Pillot, since such a modification would provide the standing up aid with an elastic upward movement assisting device for providing assistance to the user when performing lifting exercises.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan in view of Meyer and Bushnell as applied to claim 8 above, and further in view of Chillier (US Patent Number 4,666,151).

Jigyodan, Meyer and Bushnell disclose the claimed invention except for the upward movement stopper, the backward and forward chair adjusting device and the tilting ability of the chair.

Chillier teaches that it is known to use an upward movement stopper as set forth in column 5, lines 15-25 and lines 33-36 to limit the height of the carriage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with an upward movement stopper as taught by Chillier, since such a modification would provide the standing up aid with an upward movement stopper for providing a stop to limit the height of the chair.

Regarding claim 13, Examiner takes official notice that it is readily known in the art to have a chair adjusting device to change the position of a chair to suit a user by allowing for the chair to be moved forward or backward. It is common for chairs used with exercise equipment to have this feature to accommodate different exercisers and different types of exercises.

In reference to claim 14, Meyer shows that it is known to have a tilting chair as set forth in Figure 3 to make it easy for a user to stand up.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan in view of Meyer, Bushnell and Chillier as applied to claim 12 above, and further in view of Marcoux et al.

Jigyodan, Meyer, Bushnell and Chillier disclose the claimed invention except for the stopper. Marcoux teaches that it is known to use a stopper under the chair as set forth by reference numbers 86 and 87 to support the chair when moving downward and

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to stop it from moving down further. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with a stopper as taught by Marcoux, since such a modification would provide the standing up aid with a stopper for providing a stop to downward chair movement.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan in view of Meyer and Bushnell as applied to claim 8 above, and further in view of Holley (US Patent Number 4,884,841).

Jigyodan, Meyer and Bushnell disclose the claimed invention except for the assisting force being adjustable. Holley teaches that it is known to have an adjustable assisting force as set forth in claim 11 to provide different intensities of exercising for the user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with an adjustable assisting device as taught by Holley, since such a modification would provide the standing up aid with an exercise assisting device that is adjustable for allowing users to perform exercises at different intensities.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan in view of Smith (US Patent Number 5,667,460).

Jigyodan discloses the claimed invention except for the counter. Smith teaches that it is known to use a counter as set forth in column 2, lines 6-34 and in column 4, lines 51-57 to keep track of the number of repetitions or knee bends done by the user. It would have been obvious to one having ordinary skill in the art at the time the

invention was made to modify the standing up aid as taught by Jigyodan, with a counter as taught by Smith, since such a modification would provide the standing up aid with a counter for counting the number of times a user does a repetition of an exercise and bends their knee.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jigyodan in view of Meyer and Bushnell as applied to claim 8 above, and further in view of Evans (US Patent Number 5,853,015).

Jigyodan, Meyer and Bushnell disclose the claimed invention except for the slip stoppers. Evans teaches that it is known to use slip stoppers as set forth in column 4, lines 29-49 to provide a sure grip to the supporting surface during operation. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the standing up aid as taught by Jigyodan, with rubber slip stoppers as taught by Evans, since such a modification would provide the standing up aid with slip stoppers for providing a sure grip to the supporting surface during operation.

Response to Arguments

Applicant's arguments filed 5/8/2006 have been fully considered but they are not persuasive. Regarding the invention of Jigyodan not teaching a device to assist in knee-bending but rather teaching a standing up aid, Applicant should be aware that their device has the same structure as claimed and the invention of Jigyodan is capable of performing Applicant's claimed function. Thus, in response to applicant's argument that Jigyodan teaches making the user stand up compulsorily, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed

invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In response to Applicant's claim that the device of Meyer does not disclose a chair which is always attached to the user's buttocks, it should be known that the device of Meyer was only used as a teaching of adjustable lever arms. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Additionally, the device of Jigyodan teaches a seat 17 which always remains attached to the buttocks of the user during performance of an exercise.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Chhabra whose telephone number is 571-272-7330. The examiner can normally be reached on M-F 9:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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PRIMARY EXAMINER
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